IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 18.04.2006

Coram

The Honourable Mr. JUSTICE K.MOHAN RAM

Writ Petition No.10242 of 2006
and W.P.M.P.No.11581 of 2006

1. Mohandass
2. Salu
3. M.P.Thomas
4. Parvathy
5. Babu
6. P.E.Varghese
7. Ammini
8. Sasikala
9. Chandrika
10. Lalji
11. Maruthi
12. Lakshmanan
13. Thomas @ Johnu. .... Petitioners

Vs.

1. The Appellate Authority
   District Judge
   Udhagamandalam.

2. The District Forest Officer
   Gudalur,
   The Nilgiris District.

3. The Forest Settlement Officer,
   Gudalur, The Nilgiris District. .... Respondents

PRAYER: Petition filed under Article 226 of The Constitution of India praying for the issuance of a writ of certiorari calling for the records of the first respondent in C.M.A.No.23 of 2005 dated 13.12.2005 by setting aside the order of the third respondent in R.C.A.No.810 of 1998 dated 20.05.2003, and quash the same.

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For Petitioners : Mr.M.Venkateswaran.
For Respondents : Ms.Selvi George for
Mr.V.S.Sethuraman, Spl.G.P.(Forest).

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O R D E R

The above writ petition has been filed for the issuance of a writ of certiorari to call for the records of the first respondent in C.M.A.No.23 of 2005 dated 13.12.2005 by setting aside the order of the third respondent in R.C.A.No.810 of 1998 dated 20.05.2003, and quash the same.

2. When the matter came up for admission on 13.04.2006, Mrs. Selvi George took notice on behalf of the Special Government Pleader (Forest) for Respondents 2 and 3 and submitted that against the judgment and decree passed by the First respondent-Appellate Authority, District Judge Udhagamandalam only a second appeal under Section 100 of CPC can be filed and not the writ petition. At the request of the counsel on either side, the case was adjourned and that is how the matter is listed today.

3. There is no dispute that the impugned proceedings in the above writ petition is the judgment and decree dated 13.12.2005 passed in C.M.A.No.23 of 2005 on the file of the District Judge, Udhagamandalam.

4. Section 10 (2) of the Tamil Nadu Forest Act 1882 reads as follows:

> "10 (2) Rejected Claims : Appeals:- If such claim is rejected wholly or in part, the claimant may, within thirty days from the date of the order, prefer an appeal to the District Court in respect of such, rejection only; provided that the (Government) may, on just and reasonable cause for the same being shown, extend the period for such appeal within such further period as may seem proper, and an order or endorsement under the signature of one of the Secretaries to Government shall be sufficient authority for the said Court to entertain such appeal beyond the limit above specified. If the Court decides that the claim or such part thereof as has been rejected should be admitted, the Forest Settlement Officer shall proceed to deal with it in like manner as if it had been in the first instance admitted by himself".

5. Section 10 (2) of the Tamil Nadu Forest Act 1882 provides for filling of an appeal to the District Judge against the order passed by the Forest Settlement Officer. Section 10(2) does not say that the judgment and decree passed by the District Court is final. As laid down in 3. M.L.J. 324, the settlement officer under the Act is a Court and against his order appeal lies to District Court when under section 10 (2) an appeal lies to the District Court, as against the

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judgment and decree passed by a District Court, a second appeal will be under Section 100 C.P.C. Therefore, the contention of the learned Special Government Pleader for the Forest Department that only a second appeal has to be filed is acceptable.

6. The learned counsel for the petitioners is not in a position to substantiate as to how the above writ petition is maintainable when a second appeal is provided for under Section 100 CPC.

7. Therefore, the writ petition fails on the ground that the petitioners have got an alternative remedy by way of second appeal under Section 100 C.P.C. The petitioners, if so desire and so advised, can file second appeal before this court to the Law of Limitation.

8. Therefore, the above writ petition is dismissed as not maintainable, without prejudice to the right of the petitioners to file a second appeal before this Court. No costs. Consequently, the connected pending WPMP is also closed.

srk

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The District Judge,The Appellate Authority,Udhagamandalam.

2. The District Forest Officer,Gudalur,The Nilgiris District.

3. The Forest Settlement Officer, Gudalur, The Nilgiris District.

+ one cc to the Spl. Government Pleader, High Court, Madras Sr.No.19391.

+ one cc to Mr.M.Venkateswaran, Advocate Sr.No.19197.

SGL (CO)
RSM/12.6.2006

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